



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 175377

PRELIMINARY RECITALS

Pursuant to a petition filed on July 6, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Iron County ADRC regarding the denial of Include, Respect, I Self-Direct ("IRIS") Waiver Program benefits, a hearing was held on August 17, 2016, by telephone.

The issue for determination is whether the Iron County's IRIS administration agent has correctly denied the petitioner's application for IRIS eligibility on or about June 14, 2016, because he did not met the functional level of care eligibility requirements.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Manager
Iron County ADRC
300 Taconite St, Suite 201
Hurley, WI 54534-1545

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 46 year-old resident of Iron County, living in a private residence. Apparently he requested Include, Respect, I Self-Direct ("IRIS") benefits on or about April 29, 2016, when he was referred to the agent for the county's IRIS eligibility determination,

ADRC of the North, and its functional certified screening assessor, [REDACTED]. See, Exhibit #2.

2. On or about May 24, 2016, [REDACTED] performed a Long Term Care Functional Screen Report of [REDACTED]. Based upon the answers in the functional screening, as supplemented on June 10, 2016, with medical records and a follow-up phone contact with [REDACTED] on June 14, 2016, the automated report found that the petitioner did not meet nursing a home level of care, only a non-nursing home level of care. This rendered him ineligible for IRIS. By a subsequent notice dated on or about June 14, 2016, the agency informed petitioner that he would be denied IRIS Program benefits because he did not meet required level of care criteria. See, Exhibit #2.
3. On July 6, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the accuracy of the Screen Report and the denial of IRIS benefits by ADRC of the North. Benefits were not continued pending the hearing decision.
4. The Long Term Care Functional Screen Report of [REDACTED] found that he required assistance with two Activities of Daily Living (“ADLs”), to-wit, “bathing” and “mobility”; and two Instrumental Activities of Daily (“IADLs”), to-wit, “Meal Preparation” and “Arranging and Using Transportation”. See, Exhibit #1, at pp. 3-4.
5. Petitioner’s diagnoses include: GERD, dehydration & electrolyte imbalances, dyslipidemia, elevated cholesterol, pre-diabetes, a history of angina, coronary artery disease, and myocardial infarction, disorders of heart rate or rhythm, hypertension, radiculopathy at 3L, 4L, and 5L, leg pain, foot, drop, neuropathy, mood disorder, anxiety disorder, bipolar/manic depressive disorder, depression, and insomnia. See, Exhibit #1, at p. 6.

DISCUSSION

The IRIS program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults who would otherwise need care in a nursing home or other institution without these services. These individuals chose to self-direct their support system and cares as an alternative to the more centrally administered Family Care Program. In essence, it is a self-directed Family Care variant. It is authorized in the Wisconsin Statutes §46.2805(4), and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See, for example, Wis. Admin. Code § DHS 10.13(21).

Wis. Adm. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. IRIS adopts this very same functional capacity test for IRIS eligibility.

In a normal Family Care case, if the person meets the comprehensive (nursing home) level, he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or he is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b). A person eligible only under the non-nursing home level of care, is eligible for *less* FCP services.

In this IRIS variant case, the eligibility would be for reimbursement of a self-directed support program and care plan under IRIS and the umbrella services the agency provides to a self-directed participant.

Wis. Adm. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity, in the parts relevant here, as follows:

(c) *Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Adm. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

Petitioner does not argue that the May, 2016, functional screen was done incorrectly, and it is evident that the screener was accurate in the assessment. As evidenced by the screen, petitioner falls squarely into number 2 of the Comprehensive Functional Capacity definition. He requires assistance in 2 or more ADLs and one or more instrumental activities of daily living. Thus under the code definition he meets the Comprehensive, or Nursing Home, level of care.

As can be seen in petitioner's Exhibit 3, attached Letter of [REDACTED], dated October 13, 2010, and Letter of [REDACTED], dated October 19, 2010, the Department has changed the functional screen to "bring it into better alignment with the federal requirements of our adult long-term care waivers..." *Ibid*, Letter of [REDACTED]

The Department is reported to be in the process of changing the administrative code to reflect those changes. The problem is that the administrative code has *still* not yet been changed, and thus by law petitioner meets the definition of Comprehensive, Nursing Home level of care. Based upon the clear definition of the functional levels as defined in the administrative code as it reads now, I find that petitioner meets the Nursing Home level of care, and the denial decision on the functional eligibility test must be reversed. The matter must be remanded for further processing, including financial testing.

CONCLUSIONS OF LAW

Petitioner meets the nursing home level of care as defined in the Wisconsin Administrative Code for Family Care and the IRIS alternative to Family Care; the agency denial of IRIS Program eligibility due to

the determination that he was not functionally eligible for the program must be reversed; and the matter remanded for further processing, review and re-determination.

THEREFORE, it is

ORDERED

That the matter be remanded to the ADRC of the North Family Care agency with instructions to reverse the functional eligibility denial and in its stead find that the petitioner met the Nursing Home Level of Care; review and re-determine the petitioner's eligibility for IRIS Program purposes as if he met the Nursing Home Level of Care, with written notice of the outcome; and certify him as eligible for all IRIS eligibility for which he is otherwise entitled and eligible under his April 29, 2016, request and/or application for IRIS, if any. The agency shall complete these actions within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

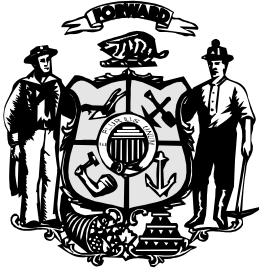
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of August, 2016

\s _____
Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 22, 2016.

Iron County ADRC
Bureau of Long-Term Support